

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE	§	CHAPTER 11 CASES
	§	
DIVERSE ENERGY SYSTEMS, LLC, et al.,	§	CASE NO. 15-34736
d/b/a LEAN TECHNOLOGIES, LLC,	§	
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	§	
	§	
	§	
	§	Jointly Administered Under
	§	Case No. 15-34736-H5-11
Debtors.	§	
	§	

RESPONSE OF NATIONS FUND I, LLC TO DEBTORS' MOTION TO
ESTABLISH BID PROCEDURES AND TO SELL CERTAIN ASSETS OF THE
ESTATE FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND
OTHER INTERESTS PURSUANT TO 11 U.S.C. § 363 AND TO ASSUME AND
ASSIGN EXECUTORY CONTRACTS AND LEASES, ETC.
(Related Docket Nos.: 178, 331, and 342)

TO THE HONORABLE DAVID R. JONES, CHIEF UNITED STATES
BANKRUPTCY JUDGE:

Nations Fund I, LLC ("**Nations**") hereby files this *Response of Nations Fund I, LLC to (i) Debtors' Motion to Establish Bid Procedures and to Sell Certain Assets of the Estate Free and Clear of Liens, Claims, Encumbrances and Other Interests Pursuant to 11 U.S.C. § 363 and to Assume and Assign Executory Contracts and Leases, Etc.* (the "**Response**") and in support thereof respectfully represents:

BACKGROUND

1. On December 29, 2014, Diverse Energy Systems, LLC d/b/a Lean Technologies, LLC ("**Diverse**"), and Nations entered into that certain Master Lease Agreement, as supplemented and modified from time to time (the "**MLA**"). Pursuant to the MLA, Diverse

leases from Nations 25 pieces of equipment owned by Nations (the “**Nations Equipment**”). The Nations Equipment is then rented to third party customers of Diverse, which include Devon Energy Production Company, L.P. (“**Devon**”).

2. Pursuant to the *Stipulation Re Adequate Protection – Nations Fund I, LLC; and Order Thereon* [Docket No. 35], which was entered by the Court on September 10, 2015, the Debtors were required to file any challenge to Nations’ “true lease” status by October 5, 2015; all other parties were required to file any such challenge by October 25, 2015. No such challenges were filed by either of those dates.

3. In addition to Nations’ ownership of the Nations Equipment, and in order to secure its obligations to Nations under the MLA, Diverse granted Nations a continuing security interest in the following collateral (the “**Nations Collateral**”):

(1) all accounts (as defined in the Uniform Commercial Code (“**UCC**”)) owing to [Diverse] from Devon Energy Production Company, LP, or any of its affiliates and all accounts (as defined in the UCC) of [Diverse] at any time arising from the rental of any [Nations] Equipment to any person or entity; (2) any and all agreements, contracts, and other instruments between [Diverse] and Devon Energy Production Company, LP, or any of its affiliates, and any other contract, agreement, or instrument between [Diverse] and any other person or entity involving in any manner whatsoever the use or rental of the [Nations] Equipment, and all accounts (as defined in the UCC) and general intangibles (as defined in the UCC) related thereto; and (3) any and all proceeds (including insurance proceeds) and products of the foregoing.

(MLA at ¶ 10b.).

4. To perfect its lien on the Nations Collateral, Nations filed a UCC-1 financing statement with the Secretary of State of North Dakota on December 30, 2014.

THE SALE MOTION

5. On November 5, 2015, the Debtors filed their *Motion to Establish Bid Procedures and to Sell Certain Assets of the Estate Free and Clear of Liens, Claims, Encumbrances and Other Interests Pursuant to 11 U.S.C. § 363 and to Assume and Assign Executory Contracts and Leases and Request for Emergency Hearing on Bid Procedures* (the “**Sale Motion**”) [Docket No. 178]. Pursuant to the Sale Motion, the Debtors are seeking approval to sell substantially all their assets by public sale pursuant to Section 363 of the Bankruptcy Code and to assume and assign any unexpired leases and executory contracts that the purchaser designates under an asset purchase agreement.

6. On January 14, 2016, the Debtors filed their *Notice of (I) Possible Assumption and Assignment of Executory Contracts and Unexpired Leases, (II) Proposed Cure Amounts and (III) Deadline to Object Thereto* (the “**Assumption Notice**”) [Docket No. 331] in connection with the Sale Motion. The Assumption Notice does *not* include any reference to Nations or the MLA.

7. On January 15, 2016, the Debtors filed their *Notice of Contingent Proposed Sale Order* [Docket No. 334] in connection with the Sale Motion. On that same day, the Debtors filed their *Notice of Amended Contingent Proposed Sale Order* (the “**Amended Proposed Sale Order**”) [Docket No. 342]. Neither of those orders includes any reference to Nations, the Nations Collateral, or the MLA.

8. During the past several days, Nations has been in direct negotiations with the proposed purchaser of the Debtors’ assets regarding the terms of the potential assumption and assignment of the MLA (as amended and restated) and the sale of the Nations Collateral to the proposed purchaser. As of the filing of this Response, the parties have not reached an agreement, but continue to negotiate and are hopeful of reaching an agreement.

9. Nations reserves its right to object to the Sale Motion, the Assumption Notice, and the Amended Proposed Sale Order (as it may be further amended), to the extent they do not condition approval of the assumption and assignment of the MLA (as may be modified) and sale of the Nations Collateral on the following:

- a. The Debtors cure any and all arrears existing under the MLA at the time of assumption and assignment, including without limitation, any Base Lease Payments due Nations for the months of December 2015 and January 2016, from funds in the lockbox account maintained by Nations to receive all payments from Devon (the “Lockbox Account”);
- b. The Debtors pay to the Texas Comptroller, any and all pre-petition sales taxes due and owing by the Debtors relating to funds passing through the Lockbox Account;
- c. The Debtors confirm, in writing with supporting evidence, that all post-petition sales taxes for monies received through the Lockbox Account have been paid to the Texas Comptroller;
- d. The Texas Comptroller confirms that that there are no claims against Nations for sales taxes relating to the Lockbox Account; and
- e. The sale of the Nations Collateral to the proposed purchaser is subject to, and not free and clear of, Nations’ lien and security interest.

10. In addition, Nations reserves the right to object to the Sale Motion, the Assumption Notice, and the Amended Proposed Sale Order (as it may be further amended) on any and all further grounds.

CONCLUSION

WHEREFORE, for the reasons set forth herein, Nations respectfully requests that the Court enter an Order consistent with the arguments set forth above and grant such other and further relief as the Court deems just and necessary under the circumstances.

Respectfully submitted,

Dated: January 20, 2016

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing pleading has been served upon all parties that are registered to receive electronic service through the court's ECF notice system in the above case on this 20th day of January, 2016.

/s/ Michael D. Warner

Michael D. Warner